

REMARKS

This Amendment supplements Applicant's previous Amendments and is in response to U.S. Patent No. 5,868,135 issued to Stephan Kaufman and U.S. Patent No. 6,251,048 issued to Arthur Kaufman noted by the Examiner.

Claims 3, 4, 6, 7, 14, 17, 19, 22 and 25 have been amended. No new matter has been inserted. Claims 32-36 have been cancelled without prejudice by this Amendment. Claims 3-17, 19-28 and 30 remain pending in the application. Applicant respectfully requests reconsideration of the Examiner's rejections.

Independent claims 3, 17 and 22 have been amended to indicate that the medical apparatus claimed by Applicant has a housing and gauge. The gauge of the medical apparatus is used for providing a determined diagnostic measurement or result achieved by the user from use of the medical apparatus. All medical apparatuses and medical devices for which Applicant's invention will be used in synthesis with will have a gauge in order to determine the diagnostic measurement or result. Neither of the Kaufman patents work in connection with the gauge of a medical apparatus or medical device. Applicant's claimed electronic assembly and/or means for verbally indicating has now been claimed in the independent claims to be in communication with the gauge present in all medical apparatuses to receive the user's achieved measurement or result for processing in relationship to the system and subsequent action of the present invention (e.g. the issuance of a verbal encouragement message based on the specific measurement or result achieved, etc.). This is evident throughout Applicant's disclosure and in particular to the description of drawings. All independent claims specifically claim that the electronic assembly of the present invention provides the verbal prompting initiating use and the verbal indicating and encouraging to the user from use of the medical apparatus are all contained within the housing of the medical apparatus.

Kaufman '135

Kaufman '135 discloses use of his invention within a self contained housing that is separate from the medical device (Abstract Lines 1-3), as opposed to being disposed within the housing of the medical device as claimed by Applicant. The housing for the thermometer, cuff, and probe does not contain any of the components used to create Kaufman 135's verbal prompting. Rather Kaufman's separate unit is connected to the medical devices for storing the medical devices (when not in use) so that they are readily available when the Kaufman unit sends a verbal prompting to the injured or convalescent person to perform a test. However, the medical devices claimed by Kaufman contained in the separate housing have no electronic assembly in order to interface with his invention, nor are any claims made of how this could be done anywhere in Kaufman's patent. Every medical apparatus requires a gauge in order to receive a diagnostic measured result. The electronics of Kaufman 135' are not in communication with any gauge of any medical device and does not receive diagnostic measurements or results from the medical device for processing and sending out a verbal message based on the received measurement or result, as claimed by Applicant.

Applicant's claims state that the electronic technology is contained within the housing of each separate medical device. As mentioned above, Kaufman discloses, *in detail*, only the use of a separate unit for any promptings, apart from the medical devices or apparatuses and is not connected or disposed inside of any of his medical devices. Kaufman's system is clearly a separate system, whereas Applicant's claimed system is contained within the housing of the medical apparatus or device and works in synthesis with the medical apparatus or device being used by the patient. Applicant's medical apparatuses can also be hand-held as the device requires thus giving mobility to the patient to move about. Kaufman '135 fails to teach these claimed features.

Though Kaufman 135's device provides certain verbal promptings, the system is completely and totally different from Applicant's claimed invention, as Kaufman requires the use of a large complex unit, separate from the medical devices. Kaufman claims to benefit the

convalescent and injured only (Col. 1, lines 25-26) and outside of a hospital setting. Applicant teaches and claims that the system is contained within the housing of the apparatus/device which can be used in a hospital setting, home setting or any other setting which the medical apparatus is normally used for.

Kaufman also remains silent regarding any therapy uses. Kaufman stipulates from the very beginning that his invention sole purpose is to benefit only an injured or convalescent person as their hospital stay is cut short and they will need added assistance. Applicant's invention is not limited to any area, other than that it is located wherever the medical apparatus or medical device is located, since it is housed within. Kaufman '135 teaches his invention is a system that "provides access to a telecommunications link in response to verbal requests of the patient and in one embodiment can be moved in a limited area adjacent the patient". (See Abstract, lines 13-15).

Applicant's claimed invention teaches that its electronic assembly is "built within or combined to accommodate usage of each medical apparatus". (See Applicant's Abstract, lines 9-10). Kaufman is limited to system that is required to be next to the patient in order for the patient to use the thermometer, blood pressure cuff, probe or receive a medication capsule. Applicant's claimed invention is not limited to the patient's location, and the invention is contained within the housing of the medical apparatus or device itself. Thus, Applicant's user can receive the benefits of the present invention whatever his or her condition is and at any location normally used for the apparatus or device, and does not require the apparatus to be next to or adjacent the user in order to use the apparatus as Kaufman claims. As describe in the specification, one non-limiting example is a peak flow meter which also houses the electronic assembly of the present invention, and can be carried anywhere the person desires.

Kaufman 135 teaches that his invention is "coupled to the computer along with medication dispensing equipment" (See Abstract, lines 5-6). The definition of coupled is: coupled without intermediate connections, as an engine and a dynamo.

The applicant teaches the its present invention verbal prompting and encouragement electronic assembly, including all parts, components or equipment needed to provide its function, is in synthesis with the medical apparatus. (See Substitute Specification Page 5, second paragraph line 7). The definition of synthesis is: "The combining of separate elements or substances to form a coherent whole."

As mentioned above, Kaufman '135 is merely for a convalescing or injured person and specifically indicates that the "invention pertains to a computer based system for providing at home or institutional assistance (convalescing care), to a convalescing or injured patient". See Kaufman, Field of the Invention: column 1, lines 24-26.

Applicant's claimed invention is not limited to any setting, home or hospital, as evidenced by the various medical apparatuses and medical devices that can house Applicant's invention and work in synthesis therewith, such as, but not limited to, a spirometer used for asthma which can be used in both the hospital or home and whether the person is injured or not.

Certain non-limiting examples of medical apparatuses described in Applicant's specification, include, but are not limited to, spirometers for use for detecting lung capacity and ventilators that would be used in a hospital setting for moisturizing the lungs postoperative. Whether convalescing, injured or not, Applicant's claimed system works for all scenarios, thus, being defined as an all encompassing method and system for providing usage relating in synthesis with the housing of the medical device or apparatus itself, not limiting usage to home or an institutional. Nor does the applicant specify a need for a particular type of patient in order to use his invention, as the system of Kaufman '135 teaches. As another non-limiting example, a normal person who has COPD (chronic obstruction pulmonary disease) is not immobile and limited or restricted to a bedside device or system. For this example, Applicant's invention can be carried in a car or while walking should the person need to use a breathing device associated with this disease, as the invention is disposed within the housing of the portable medical device used to treat the disease.

In view of the above, the claims have been amended to distinguish Applicant's invention from the invention shown in Kaufman '135.

Kaufman '048

As mentioned above, all independent claims indicate that Applicant's claimed electronic assembly sends both initiating use message and encouragement messages. The '048 Patent does not initiate use of the non-medical exercise equipment that it is associated with.

Kaufman '048 requires a motion detector for initiating usage of the Kaufman invention. The motion detector detects when an activity has begun by the exerciser or the device will not start. No prompting of the exerciser to begin using Kaufman's non-medical exercise device is described, as claimed by Applicant.

Applicant also respectfully disagrees the Kaufman '048 discloses use with a medical apparatus or medical device. One important aspect of Kaufman is that it takes the place of spotters or personal trainers (non-medical assistants), which is solely for exercise purposes and not related to any medical or therapeutic use as claimed by Applicant. In one embodiment, Kaufman '048 is merely a counter to count how many sit ups or repetitions have been performed by the exerciser (based on motion or activity of the exerciser) and to inform the exerciser to continue until the number of repetitions for the exercise set has been achieved. (See Col. 9, lines 53-55, and lines 2-3 of the Abstract). To provide this information, Kaufman merely counts and tracks the user's motion, and does not receive information from a gauge of the exercise equipment. Furthermore, the exercise equipment itself may not even contain a gauge, as it does not normally provide diagnostic measurements or results, as the medical apparatuses and medical devices claimed by Applicant.

Other embodiments of Kaufman '048 have the invention being worn by the exerciser (See Field of the Invention, Col. 1, lines 1-5). These embodiments clearly show the invention not contained within the housing of a medical apparatus or medical device as claimed by Applicant. As Kaufman '048 is dealing with exercise equipment for exercising, it is clearly not for sick

individuals or individuals requiring post operative medical and therapeutic sessions to aid in their recovery.

Kaufman '048's system is only concerned with exercising and is not programmed or provided with any logic for improving a patient's health. Kaufman and the devices it is associated with are only exercising devices. Kaufman '048 performs no analysis on a patient's health, nor does it provide encouragement for improving a current health condition of a patient. Kaufman is only concerned with exercising. Furthermore, the types of strenuous activities discussed by Kaufman are normally performed by individuals who do not have health problems. Given the physical strain and demands on the body from these strenuous activities, further health concerns could easily be experienced by a user of Applicant's claimed invention if they were to perform the Kaufman exercises, given that such users are already dealing with health issues to be using the Applicant's claimed invention in the first place.

Once motion is detected by Kaufman '048 to turn the system on, the treadmill, based upon responding to a non-medical function, improves the stamina and muscle strength of the person using it in a non-medical setting. As mentioned above, this is a system that could be helpful to a healthy person (one who can perform the exercises that Kaufman teaches). The particular non-medical system that Kaufman teaches, which continues to push a person verbally to press harder in order to build muscle mass or run faster for increased stamina, would and could be extremely harmful to the patient in certain situations relating to medicine. For instance, if one were on the treadmill taught by Kaufman and the system performed as per the guidelines and claims that Kaufman teaches, with the system prompting the person to push harder or go faster on a treadmill without properly being programmed to stop when a pulse rate went into V-Fib (which is a rapid heart rate) or too fast, could easily cause a heart attack for the user. Thus, Kaufman '048 is used solely by healthy individuals, and remains silent throughout his patent concerning any basis for protection or detection of medical needs nor does he claim that his invention has any relationship to medical at all.

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Neither Kaufman patent are related to the same function as Applicant, nor could they be used in the same way to provide the same unique method of providing a system of functioning within the housing of each medical apparatus as claimed by the Applicant. The applicant teaches that his system is emanating from each individual medical apparatus, as described in Applicant's Title of The Invention. And more importantly in relationship to exercise claims of Kaufman '408 (which contains no prompting for initiating use), Applicant's invention initiates the performance of each medical apparatus, from the start, emanating from each medical device, without motion from the patient being needed to be detected in order to start or function. Kaufman '408 fails to teach this claimed feature.

In view of the above, Applicant respectfully requests that the Examiner withdraw all objections and rejections. Favorable action passing Applicant's application to allowance is respectfully requested. If there are any additional charges, including extension of time, please bill our Deposit Account No. 503180.

Respectfully submitted,

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